APPENDIX

OPINION OF TRIAL COURT

Memorandum.

Donahue, D. J.

The question which is now for our decision is whether the Debtor, Ella G. Wood, who filed a petition under Section 75, (11 U. S. C. A. 203) of the Bankruptcy Act for composition and extension of her debts is a farmer within the purview of the said Act.

The question arises upon Petitions for Dismissal filed by mortgagee creditors, The Federal Land Bank of Omaha, and The Lincoln Joint Stock Land Bank of Lincoln. The principal basis of the petition and the only one which we need now notice in view of the condition of the record is that the Debtor is not a farmer within the meaning of the Bankruptcy Act.

The matter was heretofore referred to Honorable Herman Aye, Supervising Conciliation Commissioner, with directions to make Findings of Fact and submit Conclusions of Law. Much testimony was taken, and upon the filing of the recommendation of the Supervising Conciliation Commissioner, objections and exceptions thereto were filed, and the evidence submitted. As the record now stands, there seems to be no question of material facts in dispute, and such material facts may be summarized as follows: Ella G. Wood, a widow, past fifty-two years of age, upon the death of her husband, engaged in the work of teaching school in one of the primary grades of the public schools of Chattanooga, Tennessee. Her husband, Dr. Wood, died in the year 1919, and she took up that work shortly after his death. Some time around the years 1932 or 1933, the exact date does not clearly appear, she acquired title to a stock ranch of some 1200 or 1500 acres in Holt County, Nebraska, and at or about the same time the title to a farm in Carroll and Green Counties in Iowa. Some time after acquiring the Holt County ranch, she established (fol. 319) her residence thereon and thereafter when her term of school expired, and her work was completed in that respect, she returned home to this ranch where she and her sister made their home. The evidence seems to clearly indicate that her legal residence was in Holt County,

Nebraska, and that fact is not being seriously disputed by the creditors. The Holt County ranch was worked part of the time by hired help, and part of the time by tenants. Pasture lands were used for grazing cattle taken in by the head per month. All of these lands were encumbered by mortgages. The Debtor was not personally obligated on the mortgage notes. At or about the time she acquired the title to the Iowa land, foreclosure proceedings were commenced, and a receiver was appointed charged with the duty and obligation of collecting the rentals and preserving the property. The landlord's share from the Iowa property was in the neighborhood of $1,500 per year. The amounts received by Debtor from the Holt County land were inconsequential, ranging from around $150.00 up to $1,100 contracted for but not collected. The Debtor received as wages for her labor as a school teacher $1,250.00 each term during the last years of her work. As stated above, these facts are not disputed, and consequently we have for decision only a question of law.

As we view the matter, it is of no consequence what the Debtor paid for her land or how or when she acquired it, so long as she was the bona fide owner of the property when she filed the petition. Her status has not changed, and if she was then a farmer within the meaning of the law, she is still a farmer and entitled to maintain this action.

The Act defined a farmer as any individual who is personally bona fide (1) "engaged primarily in farming operations" or (2) "the principal part of whose income is derived from farming operations". If the facts bring the Debtor within the meaning of either or both of these definitions, then she is entitled to maintain this action, otherwise not, for this is the definition that must determine that question. Sampayo vs. Bank of Nova Scotia, 313 U. (fol. 320) S. 270. The meaning given to the language must be given with a view to the intention of the Congress and the conditions which prompted the Congress in passing the Act, of which we take judicial notice.

The present Act, under which this action is brought, went into effect on the 7th of June, 1934, long after the Debtor's status was established. A number of years prior thereto, the value of farm produce with other species of property came into

decline. The depression was on. Then came the dust storms, the drought and the grasshoppers, and in many sections of the country total failures. The value of farm lands tumbled to such an extent that in nearly every instance lands that had been mortgaged in the neighborhood of one-third to one-fourth of their considered and established market value fell away until the market value of the land became insufficient to satisfy the mortgage debt. Taxes and interest accumulated; foreclosures were commenced; receivers were appointed, who took charge of what income there was to be derived, and as a consequence the land owner found it necessary to turn from the farm to other means of livelihood. Many found it necessary to secure government work on the W. P. A. Others loaded up what little household goods they possessed, and took to the road. A general exodus was in operation. As a consequence conditions kept getting worse. The conditions (effected) three classes of owners: (1) the man on the farm who actually did the work of farming and tilling the soil; (2) the retired farmer who retired from the land to the adjacent town or village, and whose income was largely derived from rentals of his farm, supplemented in most instances by work or employment at odd jobs secured in the town, and (3) the investors who invested their savings and earnings in farm lands, and who under ordinary conditions would derive the greater, if not all, of their income from the land through the farming operations of either their agents, tenants or employees. When the depression, drought and grasshoppers came, all these three classes were affected alike. They all stood to lose all that they had. It was believed by the more optimistic that the rains would come again, and that the crops would not fail, and that with a (fol. 321) good season money might be obtained to pay the taxes and the interest on the mortgages. It was imperative in the public interest that the farms should not be abandoned, and that the farming operations should be continued. It was thought that if time was afforded the distress would be relieved and the situation remedied. Destruction was imminent. Immediate action must be taken, and so the Congress at the behest of these distressed people hurriedly prepared and passed this law as an Emergency Act. Because of the urgency and haste, perhaps it was not as carefully con-

sidered and worded as it might have been with greater deliberation. However, its purpose was made clear. Primarily it was to preserve in the land owner the fee title and right of possession rather than a discharge of personal obligations, which in most instances were worthless. In preserving the title and possession, it was the common belief that hope would be instilled and despair dispelled. There might have been a better choice of words. Consequently, the Courts that have had to interpret the Act have found much difficulty, and necessarily we find a great divergence of opinion in the authorities. However on this question, we do not find it necessary to consider or weigh the decision of the lower Courts, for we think the question is settled by the Supreme Court in First National Bank & Trust Co. vs. Beach, 301 U. S. 435, from which we quote the following language found in the opinion delivered by Justice Cardoza:

"Was respondent a farmer because 'personally bona fide engaged primarily in farming operations' or because "the principal part of his income was derived from farming operations'? We do not try to fix the meaning of either of the two branches of this definition, considered in the abstract. The two are not equivalents. They were used by way of contrast. Occasions must have been in view when the receipt of income derived from farming operations would make a farmer out of some one (—) personally or primarily was engaged in different activities. A catalogue of such occasions might err for excess or for defect if made up in advance. Hypothetical situations are laid before us, and the argument is pressed that the definition will breed absurdity if applied to this one of them or that. We refuse to be led away from the limitations of the concrete case. The words 'primarily engaged', as we find them in the first branch of the definition, do not constitute a term of art. The words 'income derived from farming operations' do not constitute such a term. In every case the totality of the facts is to be considered and appraised."

(fol. 322) In the Beach case, the facts were different from the facts as found in this case, but that is unimportant. The important thing is — may the judicial reasoning, as above set forth, be applied to the facts in the present case? At the outset, we may say that it is our belief that the fact that the

Debtor did not sign the mortgages is of no consequence in view of what we think the purpose of Congress was in passing the Act, nor do we think that the status of the Debtor was to be determined under the definition of a farmer on the day or hour of the filing of the petition. If the contention of counsel in that respect is to be accepted, then the Act would afford little if any relief to the farmer population at the time that it went into effect, because at that time the great mass of the farmers and farm owners had no income whatever from their farms. Their means of subsistence had to be obtained from other activities — mostly government labor or work in industries. Members of the family that had the qualifications taught school, worked in stores, served as housemaids in order to support themselves and to assist in the subsistence of their families. The retired farmer had no rentals from his farm, and hence no income therefrom. This likewise applied to the investor in farms who had been obtaining his livelihood therefrom. In this particular case, the Debtor's income from the Iowa land was withheld from her through the appointment of a receiver. The income from the Holt County land was practically nil. Necessarily, in order to support herself, the Debtor had to seek and obtain employment. The income from these lands, and the two lots which she owned in Tennessee was not sufficient for such purpose, and so in determining whether the Debtor was engaged primarily in farming operations, or whether the principal part of her income was derived from farming operations, we must necessarily look to what her activities were, and where the principal part of her income was derived during the normal years, under ordinary rather than distressed conditions. Unless it was the intention of Congress to afford (fol. 323) the benefit of this Act to such as these, then there would be no purpose in passing theAct.

Here we come to the other question — are the rentals derived from the Iowa land to be considered as a part of the income of the Debtor, or to be disregarded as is contended for by counsel? If this money — some $1,500.00 a year — is not the money of the Debtor, whose money is it? It is surely not the money of the Lincoln Joint Stock Land Bank, because when they obtain lawful possession of it, they must give credit therefor to the Debtor on the mortgage debt. As we view it,

it does not matter what distribution is made of the money, it is still, so long as the Debtor is possessed of the fee title to that property, part of her income and must so be considered. If I am correct in this, then the principal part of her income is derived from that Iowa land, because it is in excess of what she obtains from teaching school.

The fact that she did not sign the mortgage papers is of no consequence in our mind, if we keep in mind the purpose of Congress in passing the Act was to preserve and retain the title and possession in the owner in order that the farmer might be encouraged to carry on, to remain on the farm and in farming operations, and secondly that when values returned, any increase would enure to the farmer rather than to the mortgagee. If the only purpose of the Act, as counsel contends, was to discharge debts, then the Act would have no purpose because such procedure would not in any way remedy the impending calamity.

This brings us then to an application of the judicial reasoning in the Beach case, wherein it was said: "Occasions must have been in view when the receipt of income derived from farming operations would make a farmer out of someone who personally or primarily was engaged in different activities". In the case of this Debtor, where does her situation differ from the retired farmer living in the village or town compelled to look elsewhere than the farm for his sustenance and support? Surely counsel would not be so bold as to claim that a man retired, as (fol. 323a) indicated, was not a farmer within the meaning of the Act, and if that is to be conceded then where can we draw the line between the retired farmer and the retired banker who has all his money invested in farm lands? If the definition is to apply to the farmer who in order to support himself and family found it necessary to secure work with the W. P. A. then where is the difference in principle in a situation that compels this Debtor to seek employment as a school teacher? All of these considerations impel us to the conclusion that this Debtor comes within the definition of the Act.

The Petitions of the mortgagee creditors will therefore be denied and dismissed. In order that the record may be full and complete, it is ordered that the transcript of the proceedings had before Honorable Herman Aye, Supervising Concil-

iation Commissioner, duly certified by him, be filed and made a part of the record, and that the costs of these proceedings, including the cost of the transcript of evidence above mentioned, be taxed to the mortgage creditors, The Federal Land Bank of Omaha, and The Lincoln Joint Stock Land Bank of Lincoln, in equal shares. Exceptions will be allowed.

Dated: November 29th, 1941.

Endorsed: Filed District of Nebraska At 10:00 A. M. Nov. 29, 1941. Mary A. Mullen, Clerk. By Mildred W. McNamee, Deputy.

CIRCUIT COURT OPINION

GARDNER, Circuit Judge, delivered the opinion of the court.

The substantial question presented by this record is whether the appellee, who filed a petition under Section 75 of the Bankruptcy Act for the composition or extension of her debts, is or was a farmer within the purview of that Act. Appellee, in her petition, schedules large farm land holdings as owned by her, consisting of 1760 acres of land in Holt County, Nebraska, 475 acres of land in Greene and Carroll Counties, Iowa, 58 acres of land in Harrison County, Iowa, besides certain residence property in Chattanooga, Tennessee. She acquired title to the lands in Nebraska and Iowa subject to mortgages held by appellants. She listed personal property consisting of household goods valued at $300.00, but listed no farm machinery, implements, tools, livestock, or farm products. The proceeding was referred to the Conciliation Commissioner in Holt County, Nebraska, who after hearing testimony submitted on behalf of petitioner recommended that the proceeding be dismissed on the ground that appellee was not a farmer within the meaning of the Bankruptcy Act. Appellants having each filed a motion to dismiss the proceeding, the District Court referred the matter to Herman Aye, Supervising Conciliation Commissioner, for the purpose of hearing evidence and determining the facts and law regarding the status of the debtor. The

debtor appeared personally and by counsel before the Commissioner, was a witness in her own behalf, and the testimony theretofore taken at the first meeting of creditors was resubmitted. Appellants appeared at this hearing and again entered motions for dismissal.

The Commissioner filed his report in which he found that the debtor was not a farmer within the purview of Section 75 (r) of the Bankruptcy Act, and recommended that the proceeding be dismissed on that ground. Exceptions and objections to this report were filed by the debtor and the matter was submitted to the court. Thereafter the court filed its decision overruling the findings and conclusions of the Commissioner, and finding the debtor to be a farmer, entered an order denying appellants' motions to dismiss the proceeding. From this order and judgment appellants prosecute this appeal.

The debtor acquired title to the lands in question from her sister, Mrs. Norton, between the years 1932 and 1935. The land in Greene and Carroll Counties, Iowa, was encumbered by a mortgage to appellant Lincoln Joint Stock Land Bank for approximately $50,000.00, which was under foreclosure, and possession of the land was in a receiver appointed by the State Court. The 58 acre tract of land in Harrison County, Iowa, was also encumbered. The lands in Holt County, Nebraska, at the time the debtor acquired title were encumbered by a mortgage to appellant Federal Land Bank of Omaha and proceedings in foreclosure of that mortgage had already been commenced.

Section 75 (r) of the Bankruptcy Act defines a farmer for the purpose of the proceeding here under consideration, as follows:

> "For the purposes of this section and section 22 (b) the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in

> their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur."

It is contended by counsel for appellee that within this definition the debtor is a farmer, and it is said that a farmer includes "(1) persons primarily and bona fide engaged in producing products of the soil; (2) engaged in dairy farming, poultry or livestock; (3) engaged in producing in unmanufactured state the raw products derived from the above; (4) one, the principal part of whose income is derived from one or more of the foregoing operations." This attempt to fix, catalogue or classify in the abstract the persons who shall be adjudged farmers is not warranted. Each case must be determined upon its own individual facts and circumstances.

In the final analysis, under the admitted facts we need only consider whether the debtor was a farmer because personally bona fide engaged primarily in farming operations, or because the principal part of her income was derived from farming operations. In addition to the facts already recited, it is important to note that for many years the debtor was a resident of Chattanooga, Tennessee. She either went there as the wife of Dr. Wood, or became his wife after going to Chattanooga. It does not appear how long she remained the wife of Dr. Wood, but during her married life she lived in Chattanooga, Tennessee. Her husband departed this life, apparently leaving her some estate. Following his death she began to teach school at Chattanooga and has continued teaching there up to the present time. Her income from teaching of late years has been $1250.00 a year. She makes no claim to having farmed any of the Iowa land, even by hired help. She owns no livestock, no farm implements, nor tools. She has rented some portion of the Nebraska land to a tenant who furnishes his own equipment and farms only a very small acreage on the shares and makes hay on certain of the land also on the shares. Certain rentals received from

the Iowa lands went to the receiver, but there is no evidence that the rents collected by the receiver afford income to her, or that they will ever accrue to her rather than to the mortgagee. The most she ever received from the Nebraska land is estimated by her at from $150.00 to $200.00. She claims to be a resident of Holt County, Nebraska, where she has part of her furniture in a house on this land, but she continues to live in Chattanooga, where she has continuously taught school for upwards of twenty years, and teaching is confessedly her primary occupation. Possession of the Holt County, Nebraska, land has been retained by the debtor under the state moratorium for a period of time. Manifestly, if the debtor is a farmer, she became such after she acquired the legal title to the lands in question.

The appellee relies upon the decision of the Supreme Court in First National Bank v. Beach, 301 U. S. 435. In that case it appeared that Beach was the owner of a farm with five houses and a barn on it, where he had been living from his birth, occupying one of the houses with his wife and children. The farm in fact had been in the ownership of his family for two generations. For a time he had been engaged in the mercantile business, but owing to financial losses he began working on the farm again and gave most of his time to it after 1930. The land had an apple orchard of 200 trees, which gave him 1500 bushels of apples in 1931. He sold fruit from this orchard, cultivated a large garden, planted and raised all kinds of vegetables, fruits, and flowers. He made hay on the land and sold it, repaired the houses, laid several miles of stone wall, built two miles of barbed wire fence, and raised and sold poultry. He was occupied primarily in raising poultry. He kept sheep and a horse for carting and hauling farm tools. His total annual income from 1933 to 1935 was $4,000.00, of which $2,200.00 was derived from renting three-quarters of the land to various persons for grazing and cultivation. In discussing the statutory definition, Mr. Justice Cardozo, speaking for the court, among other things said:

"We do not try to fix the meaning of either of the two branches of this definition, considered in the abstract. The two are not equivalents. They were used by way of contrast. Occasions must have been in view when the receipt of income derived from farming operations would make a farmer out of some one who personally or primarily was engaged in different activities. A catalogue of such occasions might err for excess or for defect if made up in advance. Hypothetical situations are laid before us, and the argument is pressed that the definition will breed absurdity if applied to this one of them or that. We refuse to be led away from the limitations of the concrete case. The words 'primarily engaged,' as we find them in the first branch of the definition, do not constitute a term of art. The words 'income derived from farming operations' do not constitute such a term. In every case the totality of the facts is to be considered and appraised."

After reviewing the facts "in combination," the court held that Beach was a farmer. The court said:

"The critical fact is that the debtor worked an acreage large enough to count, that he did not work at anything else, and that he gave to this work, whether profitable or unprofitable, 'the major portion of his time.'

"2. If Beach was a farmer because he cultivated a substantial farm, he did not step into another business by leasing other acres of the tract to tenants who were to use what they hired for grazing or cultivation and other farming operations."

Referring to the claim that Beach was a landlord rather than a farmer, the court said:

"His rentals like his labor smacked of the soil, and made him not less, but more a farmer than he would have been without them. How the case would stand if he had been a merchant or a doctor and had leased a tract of farming land to tenants, we do not have to say. What has happened here is different. The farming and the leasing must be viewed in combination if we are to gain a true perspective, the two tied together as principal and incident. A single tract of land belonging to the debtor has been worked by him in part, and in part worked by others to whom a section of the tract has been let for cultivation. Far from stepping into another

> business, he has been faithful to the old one in thus dividing up the tillage. To get a living out of the land in one way or another is the thread of common purpose that binds the labor and the leases, and enables us to find in them the tokens of the same vocation. In brief the man is seen to be a farmer by every test of common speech, though his income has been garnered in rents as well as products. We emphasize the fact afresh that the words of the statute to which meaning is to be given are not phrases of art with a changeless connotation. They have a color and a content that may vary with the setting. * * * In the setting of this enterprise, the totality of its circumstances, the roots of the respondent's income go down into the soil."

Whether or not the appellee is a farmer within the purview of this act must be determined by the facts and circumstances in this case "viewed in combination," and the character of the enterprise in which she was engaging determined by "the totality of its circumstances." Acquiring legal title to farm land under the circumstances here disclosed was not a farming operation and did not *ipso facto* make her a farmer. It can not be said that she was personally engaged primarily in farming operations. She neither farmed the lands, nor did she get her living out of the land. If there was any leasing of the Nebraska land, it was not in combination with any personal farming activities of appellee. Can it be said that the receipt of income derived from farming operations made a farmer out of appellee though she was personally and primarily engaged in teaching school? She devoted her time to her profession and from that received her principal income. The language of the statute does not require that the claimant actually till the soil, but he must be "primarily bona fide personally engaged" in at least one of the enumerated farming operations. As said by the Circuit Court of Appeals, Fifth Circuit, in Williams v. Great Southern Life Insurance Company, 124 F. 2d 38:

> "He does not become a farmer by merely receiving rents or revenues without more, where he has another business in which he is primarily engaged, although

such rents and income may exceed that of such other business or occupation."

Manifestly, the law was not passed for the relief of speculators or landlords who are not and never have been farmers. By no test laid down in the Beach case, can it be said that Mrs. Wood changed her occupation from that of a school teacher to that of a farmer, nor that she ever conducted any farming operations. Under the facts here, accepting appellee's contention as to the law, she was not a farmer on the ground that she was primarily personally engaged in farming operations, nor on the ground that the principal part of her income was derived from farming operations. It is, therefore, not necessary to the decision of this case to explore or attempt definitely to define the limits and meaning of Section 75 (r) because the undisputed facts show that the debtor does not come within the limits so fixed.

The judgment appealed from is therefore reversed and the cause remanded with directions to dismiss the proceeding.